

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div style="text-align: center;">STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 03/12/03 Item: 4.b.
	File Number CPA95-037-01
	Application Type Conditional Use Permit Amendment
	Council District 6
	Planning Area Central
	Assessor's Parcel Number(s) 261-42-076, -077
PROJECT DESCRIPTION Completed by: Erin Morris	
Location: northeast corner of West San Carlos Street and Meridian Avenue	
Gross Acreage: 1.48	Net Acreage: 1.48 Net Density: N/A
Existing Zoning: CG Commercial General	Existing Use: Retail store and drive-through pharmacy
Proposed Zoning: No change	Proposed Use: Twenty-four hour operation of a retail store and drive-through pharmacy
GENERAL PLAN Completed by: EM	
Land Use/Transportation Diagram Designations: General Commercial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING Completed by: EM	
North: Residential	CP Commercial Pedestrian
East: Commercial and Residential	CG Commercial General and Unincorporated
South: Commercial	A(PD) Planned Development
West: Commercial	LI Light Industrial and CO Commercial Office
ENVIRONMENTAL STATUS Completed by: EM	
<input type="checkbox"/> Environmental Impact Report found complete	<input checked="" type="checkbox"/> Exempt
<input type="checkbox"/> Negative Declaration circulated on	<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration adopted on	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Erin Morris

Department of Public Works
None received.

Other Departments and Agencies
None received.

GENERAL CORRESPONDENCE

See attached.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Proposal

The applicant, DiSalvo Family Partnership, is requesting a Conditional Use Permit Amendment to allow 24-hour operation of an existing Walgreens retail store and drive-through pharmacy and associated site modifications. The existing retail store and drive-through pharmacy occupy two parcels totaling 1.48 acres located on the northeast corner of West San Carlos Street and Meridian Avenue. The site is surrounded by commercial uses to the west and south, a residential use to the north, and a mixture of commercial and residential uses to the east. Twenty-four hour operation of a commercial business (i.e. operation between the hours of 12:00 midnight and 6:00 a.m.) requires a Conditional Use Permit (CUP) in the subject CG Commercial General Zoning District.

Permit History

In 1995, a CUP was approved to allow the drive-through use in association with the construction of the retail store and pharmacy. The approved CUP required landscaping and lighting improvements and included a condition (Condition No. 23) stating that “the drive-through use shall be limited to operation between the hours of 6:00 a.m. to 10:00 p.m., and the retail facility shall be limited to 6:00 a.m. to 12:00 midnight, unless a CUP is approved by the City for other hours of operation.”

The retail store and drive-through pharmacy were constructed on the site in 1996 and subsequently commenced operating on a 24-hour basis without the benefit of the required permit approval. On January 22, 2002, a Notice of Noncompliance was sent to the property owner, citing the failure to comply with Condition No. 23 of the approved CUP related to hours of operation and providing a deadline of February 15, 2002 for bringing the site

The CPA application was submitted on July 18, 2002. On August 16, 2002, Planning staff sent a review letter to the applicant requesting additional site information and providing detailed suggestions for changes to the landscaping and site design to bring the site into conformance with the previous approval and the City Council Policy for 24-Hour Uses.

The review letter noted numerous discrepancies between the approved CUP and the existing features of the site. Specifically, trees and other landscaping had not been installed as designated on the approved plans. The irrigation system was in disrepair and the applicant acknowledged that there was no regular landscape maintenance. Lighting had been installed inconsistent with the approved plans in terms of location, height, and type. Very tall pole lights, not shown on the approved plans were installed adjacent to the residential property line and other pole lights installed on the site were taller than shown on the approved plans. An unpermitted spotlight was installed to illuminate the Walgreens sign on the face of the building.

The review letter requested that the applicant provide revised plans with site lighting and landscaping in conformance with City standards. The letter specifically requested that the lighting at the residential property line be reduced to 8 feet in height in conformance with Zoning Code requirements, that other pole lighting be reduced in height, and that the unpermitted spot light and building lighting be eliminated. Staff also requested that the applicant provide a concrete masonry wall on the northern property line in place of the existing fence to buffer noise from the proposed 24-hour operation of the drive-through and retail store.

Since that time, Walgreens has ceased the 24-hour operation and the property owner's representative has met with staff on numerous occasions to discuss the project requirements; however, no revised plans have been submitted. In order to move forward with the 24-hour operation proposal and to resolve the outstanding compliance issues, Planning staff scheduled this item for hearing absent revised plans.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15301 which pertains to the operation, maintenance, or minor alteration of existing private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use. The proposed 24-hour operation of the store and drive-through will not diminish the compatibility of the retail site with the adjacent residential uses; therefore, the project involves no expansion of the existing use and staff concludes that this project is exempt from Environmental Review pursuant to Section 15301.

GENERAL PLAN CONFORMANCE

Conditional Use Permit process. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

The primary issues analyzed for the project include; 1) City Council Policy for Evaluation of 24-Hour Uses; and 2) Site Improvements.

City Council Policy for Evaluation of 24-Hour Uses

The City Council Policy states that twenty-four hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. In order to ensure that this requirement can be met, the Policy states that, generally, twenty-four hour uses should not be located within 300 feet from any property residentially zoned, planned, or used. The subject property is located directly adjacent to a residentially zoned property along the northern property line. The drive-through pharmacy window is located approximately 108 feet from this property line. The Policy provides for a reduced setback based on specific mitigating circumstances, which may include separation from residential uses by a street and sound walls or an intervening commercial building. Staff initially requested that the applicant provide a masonry wall adjacent to the residential property line in order to enhance the separation between the commercial and residential uses; however, based on the applicant's concern regarding the cost of the sound wall and further review of the specific nature of this proposed late night use, staff has concluded that the existing fence and setback are adequate and consistent with the intent of the Policy. The surrounding community appears to be appreciative of the use and staff has received no complaints regarding noise or other disturbances associated with the prior, unpermitted late night operation.

In the case of the subject site, staff believes that the fence provides an adequate buffer between the subject site and the adjacent residential uses.

Site Improvements/ Maintenance

Trees and Landscaping. Trees and landscaping were not installed in conformance with the original approved CUP, and landscaping that was installed has not thrived because the applicant failed to perform regular maintenance. Staff has included a revised plan condition in the draft permit (Precedent Condition No. 2) that requires installation of additional landscaping including new street trees within 60 days and a separate maintenance condition requiring that the applicant perform effective, regular maintenance to ensure the proper performance of the landscaping (Condition No.6).

Litter. The site has not been well maintained in terms of litter removal. Staff has included a condition in the draft permit requiring regular on-site litter removal to ensure that the site does not continue in a blighted state (Condition No.8).

Shopping Carts. Staff has included a condition of approval relative to abandoned shopping carts consistent with Chapter 9.60 of the San José Municipal Code (Condition No. 9).

Conclusion

Based on the above analysis and the conditions included in the Draft Permit, staff concludes that the proposed 24-Hour Use is in substantial conformance with the Council Policy and that the permit amendment will bring the site into conformance with City standards. Subject to the proposed modifications to the site including lighting, trees, landscaping, and improved site maintenance, staff believes that this use can operate on a 24-Hour basis without detriment to nearby residential uses or the general welfare of the surrounding area.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial with Neighborhood Business District Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The subject site is within the West San Carlos Neighborhood Business District.
3. The project is subject to the City Council Policy on 24-Hour Uses, the City Council Policy on Outdoor Lighting, and the Commercial Design Guidelines.
4. The project site is located within the CG Commercial General Zoning District.
5. The subject site is surrounded by commercial uses to the west and south, a residential use to the north, and a mixture of commercial and residential uses to the east.
6. The subject site is directed adjacent to a residential use to the north.

property.

10. The improvements that were made to the site were not consistent with the approved CUP in terms of lighting, landscaping, and street trees.
11. The proposal is to extend the hours of operation for the retail store and drive-through pharmacy to allow 24-hour operation and to address identified site issues.
12. The proposal includes several site improvements, including landscaping, trees, and lighting. A revised plan condition has been included in the permit to ensure that the location and details of the landscaping, trees, and lighting conform to City standards.
13. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that the operation of a retail store and drive-through pharmacy between the hours of 12:00 a.m. and 6:00 a.m. is incidental to the daily operation of the store and therefore involves negligible expansion of the existing retail use.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

quality of traffic such use would generate; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit Amendment to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Plan Revisions.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. Site Plan. Provide plans that includes:
 - 1) The location and details of all existing and proposed improvements;
 - 2) Removal of the existing wall-mounted floodlights and the pole-mounted spot light;
 - 3) Installation of new wall-mounted lights along the walkway consistent with the City's Outdoor Lighting Policy and Zoning Ordinance and not taller than 8 feet in height;

- 2) New street trees along West San Carlos and Grand Avenue;
 - 3) Installation of landscaping including trees on the site.
- c. Elevations. Provide elevations for the building that indicate the location of new wall-mounted lighting.
3. **Lot Combination.** Within 90 days of the issuance of this permit, demonstrate that the subject site is one parcel or record a lot line adjustment to combine the two parcels.
 4. **Deadline for Implementation of Landscaping.** Within 60 days of approval of this Permit, the applicant shall bring the site landscaping into conformance with the revised plans approved pursuant to Precedent Condition No. 2 and submit written verification to the Director of Planning that this requirement has been met.
 5. **Deadline for Implementation of Lighting.** Within 90 days of approval of this Permit, the applicant shall bring the site lighting into conformance with the revised plans approved pursuant to Precedent Condition No. 2 and submit written verification to the Director of Planning that this requirement has been met.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Walgreens San Carlos Street" dated July 29, 2002, as revised by Precedent Condition #2, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Lighting.** All new lighting shall conform to the Zoning Ordinance and the City Council Policy for Outdoor Lighting.

6. **Landscaping Maintenance.** Landscaping and trees shall be maintained on a regular basis to ensure successful performance.
7. **Street Trees.** Provide street trees consistent with the direction of the City Arborist.
8. **Litter.** The applicant shall maintain the site free of litter.
9. **Shopping Carts.** The applicant shall comply with Chapter 9.60 of San José Municipal Code regarding shopping carts.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance